UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,260	09/17/2003	Patsy Ann Krautkramer	19167	3401

23556 7590 03/17/2008

KIMBERLY-CLARK WORLDWIDE, INC.
Catherine E. Wolf
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER	
HAND, MELANIE JO	

ART UNIT	PAPER NUMBER
3761	

MAIL DATE	DELIVERY MODE
03/17/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/664,260
Filing Date: September 17, 2003
Appellant(s): KRAUTKRAMER ET AL.

Sebastian C. Pugliese III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 7, 2007 appealing from the Office action mailed August 10, 2007.

(1) Real Party in Interest

The real party in interest is Kimberly-Clark Worldwide, Inc.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,608,236	BURNES ET AL	08-2003
2003/0097109	BRUCE ET AL	05-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burnes et al (U.S. Patent No. 6,608,236) in view of Bruce et al (U.S. Patent Application Publication No. 2003/0097109).

With respect to **claim 1:** Burnes teaches an absorbent feminine care article having a longitudinal direction, a lateral direction, first and second longitudinally opposed end portions, and an intermediate portion located between said end portions, said article comprising: a liquid-permeable cover in the form of a body-side liner (Col. 23, lines 15-18); a baffle (Col. 23, lines 15-18); and an absorbent body in the form of a distribution/retention layer sandwiched between the cover and baffle (Col. 23, lines 15-18); wherein said absorbent body includes an intake layer 6 and a shaping layer 9 (Fig. 14, Col. 13, lines 43, 64-66); said shaping layer 9 is positioned between said cover and said baffle, and has a longitudinal shaping-layer length and a lateral shaping-layer width (Fig. 14); said intake layer 6 is positioned between said cover and said shaping layer 9 and has a longitudinal intake-layer length and a lateral intake-layer width (Fig. 14, Col. 13, lines 43, 64-66); said intake layer 6 (referred to as the "top layer in the Table in Col.

14) has an area extent which is smaller than an area extent of said shaping layer 9 (referred to as the "bottom layer" in the Table in Col. 14) (Col. 14, Table); said shaping layer 9 has a first longitudinal half-length from the terminal edge of one lobe to a lateral centerline, a second longitudinal half-length from the terminal edge of the second lobe to a lateral centerline, a narrow-section, a wide-section, and a transition-section; said wide-section of the shaping layer 9 includes a maximum lateral width of the shaping layer (as seen in Fig. 14 and as evidence by measurements in the Table in Col. 14) and includes a terminal end edge located in said first half-length of the shaping layer 9, that is the terminal end edge of the first lobe.

Burnes does not teach a longitudinally asymmetric shaping layer 9. Bruce teaches that longitudinally asymmetric (Fig. 7) absorbent articles designed specifically for use in thong undergarments are known in the art and provides known positioning and shaping of the articles for such thong undergarments. Bruce also teaches that "sanitary napkin styles have shapes dictated not by the necessity to place maximum amounts of absorbency in the center of the napkin but rather by the style of panty preferred by the user." ('109, Fig. 7, ¶¶ 0005,0033) As can clearly be seen in Fig. 7, which depicts the position of a sanitary napkin in a known U.S. thong, the center of the crotch is at the position of 0 mm on the grid, which is the target insult region, and is located in the wider, front section of the napkin, whose centerline in this grid is at the 20 mm position in the back of the thong. Thus it would be obvious to one of ordinary skill in the art to modify the article of Burnes for use in a known undergarment style by shifting any or all of the absorbency layers (including the intake layer 6) forward such that the intake layer is longitudinally offset toward an article region which is delimited by said first half-length of the shaping layer 9. Thus, by modifying the garment of Burnes to fit a well-known thong undergarment style in the back of the garment, said transition-section is thus located between said narrow and wide sections of the modified shaping layer 9, the transition-section having

lateral side edges which interconnect lateral side edges of the narrow-section of the shaping layer with corresponding lateral side edges of the wide-section of the shaping layer; said narrow-section of the modified shaping layer 9 would include a terminal end edge located in said second half-length of the shaping layer; and said intake layer would be longitudinally offset toward an article region which is delimited by said first half-length of the shaping layer.

With respect to **claim 2:** The intake-layer length is smaller than said shaping-layer length, and said intake-layer width is smaller than said shaping-layer width. ('236, Col. 14, Table)

With respect to **claim 3:** The narrow-section of the shaping layer substantially avoids extending into an article region that is delimited by said first longitudinal half-length of the shaping layer. The narrow section resides in the second half-length and is separated from the first half-length by the transition section and thus physically cannot extend into the article region that is delimited by said first longitudinal half-length of the shaping layer.

With respect to **claim 4:** The intake layer of the combined teaching of Burnes and Bruce substantially avoids extending into a region of the article that is delimited by said narrow-section of the shaping layer.

With respect to **claim 5:** At least about 55 % of the intake layer length of the combined teaching of Burnes and Bruce is located in an article region that is delimited by the first half-length of the shaping layer. ('109, Fig. 7) The center of the intake layer of the combined teaching is aligned with the center of the article (as is taught by Burnes in Fig. 14), and the center of the article is located in the first longitudinal half-length of the thong taught by Bruce in Fig. 7.

With respect to **claim 6:** At least about 55 % of the intake layer length of the combined teaching of Burnes and Bruce is located in an article region that is delimited by the first half-length of the shaping layer, therefore at least about 55 % of the area of the intake layer is located in an article region that is delimited by the first half-length of the shaping layer.

With respect to **claim 7:** An inboard boundary of said narrow-section of the shaping layer 9 taught by Burnes is delimited by an upper-limit lateral dimension of not more than about 62 mm, as the article taught by Burnes at the transition section (i.e. the center) is 60 mm ('236, Col. 14, Table), and the narrow section does not extend beyond the transition section and is smaller in width than said transition section.

With respect to **claim 8:** An inboard boundary of said narrow-section of the shaping layer 9 taught by Burnes is delimited by an upper-limit lateral dimension of not more than about 98% of said maximum lateral width of the shaping layer, or 68.6 mm. ('236, Col. 14, Table)

With respect to **claim 9:** An inboard boundary of said wide-section of the shaping layer 9 taught by Burnes is delimited by a lower-limit lateral dimension of 70 mm ('236, Col. 14, Table), which is not less than about 40 mm.

With respect to **claim 10:** An inboard boundary said wide-section of the shaping layer 9 taught by Burnes is delimited by a lower-limit lateral dimension of 70 mm ('236, Col. 14, Table), which is not less than about 60 % of said maximum lateral width, or 42 mm, of the shaping layer 9.

With respect to **claim 11:** The transition-section of the shaping layer of the combined teaching of Burnes and Bruce extends between a minimum lateral dimension of said wide-section of the shaping layer, and a maximum lateral dimension of said narrow-section of the shaping layer (Fig. 14 taught by Burnes and Fig. 7 taught by Bruce); the shaping layer has a lower-limit lateral dimension; and the lower-limit lateral dimension of the shaping layer is located in the second half-length of the shaping layer. (Fig. 14 taught by Burnes and Fig. 7 taught by Bruce)

With respect to **claim 12:** The transition-section of the shaping layer of the combined teaching of Burnes and Bruce has tapering side edges that are substantially linear.

With respect to **claim 13:** The transition-section of the shaping layer taught by Burnes has tapering side edges that are curvilinear. ('236, Fig. 14)

With respect to **claim 14:** The transition-section of the shaping layer taught by Burnes has tapering side edges, and at least a portion of each side edge is substantially outwardly concave. ('236, Fig. 14)

With respect to **claim 15:** The intake layer 6 taught by Burnes has an intake-layer area, said shaping layer 9 taught by Burnes has a shaping-layer area, and the entirety of said intake-layer area lies within an article region that is delimited by said shaping layer area, owing to the superposed relationship of the intake layer with respect to the shaping layer, and the larger size of the shaping layer. ('236, Fig. 14, Col. 13, lines 43, 64-66, Col. 14, Table)

With respect to **claim 16:** A terminal end edge of said intake layer 6 is inwardly spaced from said terminal end edge of the narrow-section of the shaping layer 9 by a narrow-end distance of 33 mm, which satisfies the limitation of at least a minimum of about 30 mm. ('236, Fig. 14, Col. 13, lines 43, 64-66, Col. 14, Table)

With respect to **claim 17:** The narrow-section of the shaping layer of the combined teaching of Burnes and Bruce includes a pair of laterally opposed side edges that are substantially parallel to each other. ('109, Fig. 7)

With respect to **claim 18:** The shaping layer 9 taught by Burnes includes at least about 5 wt% superabsorbent material and not more than about 75 wt% superabsorbent material, based upon Burnes' teaching that the retention layer contains 80-90% coform material, which can contain superabsorbent. The interpretation of "can contain" is interpreted herein as meaning that the entire 80-90% of the coform is not absorbent material. Burnes teaches by reference to U.S. Patent No. 4,818,464 to Lau et al, that the superabsorbent material is an additive in the coform process, thus the shaping layer taught by Burnes is considered herein to contain between 5-75% superabsorbent material.

With respect to **claim 19:** The shaping layer 9 taught by Burnes has a shaping-layer basis weight of 175 gsm, or at least about 100 g/m2 and not more than about 400 g/m2 ('236, Col. 13, Table 1); a shaping-layer density of between 0.03-0.1 g/cc, which overlaps the range of at least about 0.06 g/cm^3 and not more than about 0.3 g/cm^3 of a substantially identical menses simulant to claimed simulant A, a shaping-layer total absorbent saturation capacity of 2.3-3.8 g/cc ('236, Col. 15, Table) and a shaping-layer area of about 127 cm^2, or at least about 100 cm^2 and not

more than about 150 cm^2 ('236, Col. 14, Table) ; and said intake layer has an intake-layer density (0.02-0.06 g/cc) which is less than the shaping-layer density (0.03-0.1 g/cc), has an intake-layer total absorbent capacity (1.36-1.5 g) which is less than the shaping-layer total absorbent capacity (2.65-3.64 g), and has an intake-layer area which is less than the shaping-layer area. (Col. 11, lines 48-50, Col. 12, lines 7-11, Col. 14, Table, Col. 15, Table)

Burnes does not teach a shaping layer absorbent capacity of at least about 5 grams and not more than about 30 grams of menses simulant A. However applicant has not established criticality for such an absorbent capacity. Since the absorbent capacity of the article of Burnes is clearly a result-effective variable, it would be obvious to one of ordinary skill in the art to modify the absorbent capacity of the shaping layer of the combined teaching of Burnes and Bruce so as to be at least about 5 grams. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. See *In re Aller, Lacey and Hall (105 USPQ 233, CCPA, 1955).*

With respect to **claim 20:** The shaping layer 9 taught by Burnes includes a stabilized airlaid, fibrous material having binder fiber therein. ('236, Col. 12, lines 14-17)

With respect to **claim 21:** The intake layer 6 taught by Burnes includes a stabilized airlaid, fibrous material having binder fiber therein. ('236, Col. 11, lines 55-58)

With respect to **claim 22:** The article taught by the combined teaching of Burnes and Bruce does not further include asymmetric narrow-section-wings, however Burnes does teach that they are a known improvement in the art for enhanced leakage protection, (Col. 1, lines 28-31) therefore it would be obvious to one of ordinary skill in the art to modify the article of the

combined teaching of Burnes and Bruce so as to contain asymmetric wings in the narrow section to enhance leakage protection as taught by Burnes.

(10) Response to Argument

Applicant's arguments filed December 7, 2007 have been fully considered but they are not persuasive. With respect to arguments regarding the rejection of claims 1-22: Applicant argues that one of ordinary skill in the art would not be motivated to combine the teachings of Burnes and Bruce because Burnes teaches optional addition of a topsheet, backsheet, side wrapping elements, etc. and thus Burnes does not explicitly teach these elements and Bruce does not remedy the perceived deficiencies of Bruce. This is not persuasive because, upon further review of the Burnes reference, examiner finds no evidence that these layers are optional; in fact the layers appear to be explicitly disclosed by Burnes. Assuming *arguendo* that applicant is correct, disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. See *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). ". A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) See also MPEP 2123.

As to applicant's broad argument that there is no motivation to combine the teachings of Burnes and Bruce because the prior art of Burnes is directed to a stabilized absorbent material in a multicomponent personal care product and Bruce is directed to a system with little detail on construction of articles. This is not persuasive. Bruce was introduced as a secondary reference

for the sole purpose of supporting the Office's position that asymmetric personal care products are known in the art and designed explicitly for thong undergarments which are themselves widely known and used in the art and the prior art of Bruce need not teach limitations that have already been taught by Burnes, thus applicant's opinion that Bruce contains insufficient structural detail is immaterial and insufficient to overcome the rejection of claim 1 under 35 U.S.C. 103.

Applicant has not presented arguments with specific regard to any of dependent claims 2-22. As such, the Office interprets this omission as a concession that the rejections are proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie J Hand/

Examiner, Art Unit 3761

Conferees:

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

/Angela D Sykes/

Supervisory Patent Examiner, Art Unit 3762